

THE
LIMITATION ACT

NO. XV OF 1877

WITH

NOTES OF CASES.

BY

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CALCUTTA
THACKER, SPINK AND CO

1883.

CALCUTTA

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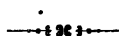


THE favourable manner in which my Summary of Case-law on the subject of Torts has been received, has encouraged me to attempt a somewhat similar work on Limitation. The law of 1877 having, however, reduced the subject to comparatively narrow limits, I have not deemed it advisable to take up what I may call the theoretical side of the subject, or to attempt to show on what grounds the different periods of limitation have been fixed at the terms laid down in the Act. All that the present work attempts is to give the principal rulings of the Courts under each section or other heading which they illustrate and explain, the index at the end of the volume assisting the enquirer to ascertain without delay or trouble the page and heading under which he will find information on the particular point he wishes to look up.

R. D. ALEXANDER.

ALLAHABAD,
May 1st, 1883.

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THE
INDIAN LIMITATION ACT
BEING
ACT XV OF 1877.

—•—

An Act for the limitation of suits and for other purposes

WHEREAS it is expedient to amend the law relating to
the limitation of suits, appeals, and
Preamble certain applications to Courts; And
whereas it is also expedient to provide rules for acquiring
by possession the ownership of easements and other pro-
perty; It is hereby enacted as follows:—

Act does not apply to applications to revive suit and restore to
board—*Govind v Itungunmoh* (1); nor to applications for probate—
In re Ishan (2); nor to applications to a Court to do what it has
no discretion to refuse; nor to applications for the exercise of func-
tions of a ministerial character—*Kylasa v. Ramasami* (3), *Vithal v*
Vithojirav (4).

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The
Indian Limitation Act, 1877:"

It extends to the whole of British India; but nothing
contained in sections two and three or
Extent of Act. in Parts II. and III. applies—

- (a) to suits under the Indian Divorce Act, or
(b) to suits under the Madras Regulation VI of 1831;

(1) I. L. R., 6 Calc., 60.
(2) *Ibid* 707

(3) I. L. R., 4 Mad., 172
(4) I. L. R., 6 Bom., 586

SUITS FOR WHICH SHORTER PERIOD PRESCRIBED.

Commencement. And it shall come into force on the first day of October, 1877.

2. On and from that day the Acts mentioned in the first schedule hereto annexed shall be repealed to the extent therein specified.

But all references to the Indian Limitation Act, 1871, shall be read as if made to this Act, and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, section 25.

References to Act IX of 1871.

Saving of titles already acquired.

Saving of Act IX of 1872, section 25.

Notwithstanding anything herein contained, any suit mentioned in No. 146 of the second schedule hereto annexed may be brought within five years next after the said first day of October, 1877, unless where the period prescribed for such suit by the said Indian Limitation Act, 1871, shall have expired before the completion of the said five years; and any other suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the said Indian Limitation Act, 1871, may be brought within two years next after the said first day of October, 1877, unless where the period prescribed for such suit by the same Act shall have expired before the completion of the said two years.

Right to sue on accounts stated while Act IX of 1871 was in force, not a 'title' acquired under that Act.—*Thakarya v. Sheo Singh* (1), *Zulfiyar v. Munnu* (2). The words 'right to sue' include any application invoking aid of Court to satisfy a demand, and do not refer to suits only.—*Nursing v. Hurryhur* (3), *Shamboonnath v. Guruchurn* (4).

(1) I. L. R., 2 All., 872.

(2) I. L. R., 3 All. (F. B.), 148.

(3) I. L. R., 5 Calc., 897.

(4) *Ibid.*, 894.

DEFINITIONS.

Period shorter under Act XV of 1877 than under Act IX of 1871, art. 127 — *Narain v Lokenath* (1); art. 67 than art. 66 — *Rup Kishore v. Mohan* (2); art 73 than art 72. — *Appasami v Aghilanda* (3).

3. In this Act, unless there be Interpretation-clause. something repugnant in the subject or context—

‘plaintiff’ includes also any person from or through whom a plaintiff derives his right to sue; ‘applicant’ includes also any person from or through whom an applicant derives his right to apply; and ‘defendant’ includes also any person from or through whom a defendant derives his liability to be sued:

‘Easement’ includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon the land of another:

‘Easement’ includes ‘*profit à prendre*’ — *Chunder v. Shib Chunder* (4), also right of private ferry — *Purmeshari v. Mahommed Syud* (5).

‘bill of exchange’ includes also a hundi and a cheque:

‘bond’ includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

‘promissory note’ means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

‘trustee’ does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

‘suit’ does not include an appeal or an application:

‘Suit’ does not include application. — *Kalyan v. Gansham* (6).

‘registered’ means duly registered in British India under the law for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context:

(1) I. L. R., 7 Calc., 461.

(2) I. L. R., 3 All., 415.

(3) I. L. R., 2 Mad., 113.

(4) I. L. R., 5 Calc., 245

(5) I. L. R., 6 Calc., 608.

(6) I. L. R., 5 Bom., 29.

'foreign country' means any country other than British India;

and nothing shall be deemed to be done in 'good faith' which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

4. Subject to the provisions contained in sections five to twenty-five (inclusive), every suit Dismissal of suits, instituted, &c., af-
&c., instituted, &c., af-
ter period of limitation. plication made after the period of
limitation prescribed therefor by the second schedule hereto
annexed shall be dismissed, although limitation has not
been set up as a defence.

Explanation.—A suit is instituted in ordinary cases when the plaint is presented to the proper officer, in the case of a pauper, when his application for leave to sue as a pauper is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the Official Liquidator.

Illustrations

(a.) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The Appellate Court must dismiss the suit.

(b.) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

Imperative on the Courts to take up question of limitation.—*Bull v. Stowell* (1) Imperative in India, but not in England, unless pleaded by defendant — *Nursing v. Hurryhur* (2).

Plaint insufficiently stamped presented within time, returned for deficiency to be made good, presented again after time,—held, instituted at first presentation—*Mussamat Begu v. Syud* (3); same held, where memorandum of appeal insufficiently stamped—*Sheo Partab v. Sheo Gholam* (4); and where plaint returned for amendment—*Ram Lall v. Harrison* (5), and where memorandum of appeal returned for amendment.—*Jogarnath v. Lallmun* (6) Registration of plaint after time held not to bar — *Hidayat v. Mussamat Maruy* (7). Where pauper, pending enquiry into pauperism, pays in full fees after time, held, date

(1) 1 I. R., 4 All., 322

(2) 1 I. R., 5 Calc., 897.

(3) All. H. C. Rep., 1874, p. 139.

(3) All. H. C. Rep., 1871, p. 202.

(4) I. L. R., 2 All., 875.

(5) *Ibid.*, 282.

(6) I. L. R., 1 All., 260.

of institution of suit, date of presenting application for leave to sue.—*Shunner v. Orde* (1).

5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens:

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

If Court closed on working day, still subsequent day in time —*Bishen v. Ahmed* (2).

Section applies to suits brought under special laws —*Gadap v. Krivto* (3), *Khoshelall v. Gunesb* (4); and where fifteen days allowed to tenant to pay up arrears expires on day Court closed. —*Hussain v. Donzelle* (5)

Provision for extending time for filing appeal does not extend to application for leave to appeal as a pauper. —*Lakshmi v. Ananta* (6), *Gunga v. Balwant* (7). Order *ex-parte* admitting appeal provisional only may be questioned at the hearing —*Mutter v. Barakullah* (8); but not at hearing before Subordinate Judge when appeal transferred by District Judge —*Jhotee v. Omesh* (9). High Court can, however, on second appeal, look into grounds given by Judge for admitting appeal after time. —*Chunder v. Boshoon* (10) followed *Mouri v. Surendranath* (11). Verbal allegation of miscalculation of time not sufficient cause. —*Zaibulnisa v. Kulsum* (12) Discussion as to meaning of 'sufficient cause;' delay owing to necessary communications having to be made with Supreme Government, held sufficient —*The Secretary of State v. Muttuswamy* (13) Pending of application for review finally rejected no ground —*Nobo v. Kamnace* (14). Respondent being prevented urging objections owing to withdrawal of appeal, no ground for allowing cross-appeal after time —*Surbhai v. Ragunathji* (15). Where appeal admitted by single Judge of High Court, after time, order may be set aside if made without sufficient cause at hearing before Division Bench. —*Dubey v. Ganeshi* (16). Application for review admitted two years after judgment, no sufficient cause —*Madho v. Ruhman* (17). Where out

(1) I. L. R., 2 All (P. C.), 241.

(2) I. L. R., 1 All., 263

(3) I. L. R., 5 Calc., 314.

(4) I. L. R., 3 Calc., 690.

(5) I. L. R., 5 Calc., 906.

(6) I. L. R., 2 Mad., 230.

(7) 4W. N., All., 159.

(8) *Ibid*, 111.

(9) I. L. R., 5 Calc., 1.

(10) I. L. R., 8 Calc., 251.

(11) 10 W. R., 178

(12) I. L. R., 1 All., 250.

(13) 4 B. L. R., Appx., 84.

(14) B. L. R., Sup. Vol., 349.

(15) 10 Bomb. H. C. Rep., 397.

(16) I. L. R., 1 All., 34.

(17) I. L. R., 2 All., 287.

of five analogous cases High Court's decision reversed by Privy Council in two, review allowed in the other three after time—*Sattu v. Tarini* (1); there must be just and reasonable ground for delay in applying to review. Preferring an appeal is not such a ground.—*Fakara v. Basappa* (2). Registration of appeal does not prevent its being rejected if time barred.—*Syud v. Mahomed Amir* (3). Provisions of section apply to suit instituted under sec 7^t, Act III of 1877 (The Registration Act).—*Nijabutoolla v Wajir* (4).

6. When, by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

Special and local laws of limitation. Rules for computing limitation in Act apply to suits, appeals, applications under special or local laws—*Behari v. Mangolanath* (5); same principle in *Golap v. Kristo* (6).

7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed

Legal disability. When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed

Double and successive disabilities. When his disability continues up to his death, his legal representative may institute the suit, or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Disability of representative.

(1) 3 B. L. R., A. C., 287.

(2) " Bomb. H. C. Rep., A. C., 234.

(3) 4 B. L. R., App. S., 103.

(4) 1 L. R., 8 Calc., 910.

(5) 1 L. R., 5 Calc., 110.

(6) *Ibid*, 314.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a.) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b.) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(c.) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d.) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e.) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f.) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Minor may sue through proper representative during disability.—*Ram Autar v. Dhunnu* (1), *Phoolbass v. Lalla Jogessar* (2)

Privilege of section limited to minor, and after his death to legal representatives. Purchaser from minor cannot claim benefits of section.—*Mahommed Assad v. Yakoob* (3).

Where guardian sues for minor, suit is suit of minor, and may be brought any time during minority.—*Khoda Buxh v. Budree* (4), *Sreemutty v. Nawal* (5), *Huro v. Anand* (6) approved and followed.

The fact that a minor is for a time represented by a guardian does not remove the disability of the minor.—*Ananthoramu v. Karuppana* (7)

(1) All H. C. Rep., 1869, p. 122

(2) I. L. R., 1 Calc. (P. C.), 226.

(3) 15 B. L. R., 357

(4) I L. R. Calc., 137.

(5) 17 W. R., 419.

(6) 3 W. R., 8.

(7) I L. R., 4 Mad., 119.

8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Illustrations.

(a.) *A* incurs a debt to a firm of which *B*, *C*, and *D* are partners. *B* is insane and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*. Time runs against *B*, *C*, and *D*.

(b.) *A* incurs a debt to a firm of which *E*, *F*, and *G* are partners. *E* and *F* are insane, and *G* is a minor. Time will not run against any of them until either *E* or *F* becomes sane, or *G* attains majority.

Where a manager of a Hindu family, one of whom was a minor, made a loan and limitation expired during the minority, but during period before limitation there were several members '*sui juris*,' the minor sued to recover, relying on the section, on attaining majority. Held that, as more than one member of the family could have given the debtor a discharge without the minor's concurrence, the section was not applicable.—*Surju v Kwahesh* (1).

9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Continuous running of time. Provided that where letters of administration to the estate of creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Absence beyond seas, voluntarily or in consequence of transportation, gives no exemption once time has begun to run—*Domun v. Sodunkolah* (2); nor voluntary absence abroad after attaining majority—*Venkata v. Giri* (3); nor ignorance of the defendant's residence—*Mahomed Museehodeen v Museehodeen* (4).

When time began to run owing to cause of action arising in lifetime of ancestor, subsequent disability of heir not reckoned—*Mohabut v. Ali Mohammed* (5). Where time has once begun to run, subsequent absence of defendant from British India not excluded. Sections 9 and 13 must be read together.—*Narranji v Mugniram* (6). This was dissented from in *Beake & Co. v Dams* (7).

(1) 1 L. R., 4 All., 512.

(2) 1 B. L. R., S. N., 25.

(3) 2 Mad. H. C. Rep., 113.

(4) All H. C. Rep., 1876, p. 173.

(5) 3 B. L. R., Appx. 80.

(6) 1 L. R., 6 Bom., 103.

• (7) 1 L. R., 4 All., 530.

10. Notwithstanding anything hereinbefore contained, no Suits against express trustees and their representatives suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time.

Transaction as to shares in a certain company held not to amount to a 'trust for any specific purpose.'—*Ahmed v. Adjem* (1) Where trust expressly created for specific purpose and property vested in a trustee upon such trust, the section applies, but not where trust implied or to be inferred by law.—*Kherodomoney v. Doonga Money* (2), *Greender v. Macintosh* (3) Where the section does not apply, any article of sched. in which suits the case will apply. Suits for an account from trustee do not fall under section—*Saroda v. Brojonath* (4). Charge of debts by a testator on an estate generally creates no trust. But where particular property given upon trust to pay a particular debt or debts, it is a trust under the section—*Anund Moye v. Gish Chunder* (5).

Clause in *Wajib-ool-Urz* that lands of absconded or absent co-sharers should be restored to them on return, did not constitute the 'ad interim' holders trustees—*Piari v. Sabga* (6), *Hurbhaji v. Gumam* (7), *Sirdar v. Pnam* (8); and that a trust cannot be proved from a statement recorded in the *Wajib-ool-Urz*, see *Kamal v. Batul* (9).

Section has reference to express trustees. It must appear from express words or from the facts that the rightful owner has entrusted the property to alleged trustee for discharge of particular obligation.—*Burkat v. Duulat* (10).

Suit against trustees to charge certain property with trusts declared by the author of the trust in respect of that property, and for an account, is a suit to follow property, and is not barred by any length of time.—*Hurro Comaree v. Turm* (11).

11. Suits instituted in British India on contracts

Suits on foreign contracts.

entered into in a foreign country are subject to the rules prescribed by this Act.

No foreign rule of limitation shall be a defence to a Foreign limitation law. suit instituted in British India on a contract entered into in a foreign

(1) I. L. R., 2 Calc., 323.

(2) I. L. R., 4 Calc., 456.

(3) *Ibid.*, 897.

(4) I. L. R., 5 Calc., 910.

(5) I. L. R., 7 Calc., 792.

(6) I. L. R., 2 All., 394.

(7) I. L. R., 2 All., 493.

(8) I. L. R., 3 All., 458.

(9) I. L. R., 2 All., 460.

(10) I. L. R., 4 All., 187.

(11) I. L. R., 8 Calc., 766.

country, unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12 In computing the period of limitation prescribed, for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of day on which right to sue accrues
In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Words 'the time requisite for obtaining a copy of the judgment,' held not to apply in the case of an application for leave to appeal to Her Majesty in Council—*Jowahir v. Naram* (1) (*per* Stuart, C. J., Spankie, J., dis.); nor where appeal, under cl. 10 of the Letters Patent, to Full Court, such copy not being required under the rules of the Court—*Fazal v. Phul Kuar* (2)

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

Exclusion of time of defendant's absence from British India.
Provisions of section do not apply to an application by a judgment-debtor in proceedings in execution of decree—*Akhan v. Gungaram* (3); nor, if the absence of the defendant from British India is subsequent to time having commenced to run in respect of the cause of action.—*Narranji v. Mugguram* (4) (see sec 9). This ruling was dissented

(1) I. L. R., 1 All., 644.

(2) I. L. R., 2 All. (F. B.), 192.

(3) I. L. R., 3 All., 185

(4) I. L. R., 6-Bom., 103.

from in *Beake & Co. v. Davis* (1), where it was held, that this section is in no way affected or controlled by sec 9, and that, in every case, the time a defendant was absent from British India must be excluded.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure Code, section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief, shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Explanation 1—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

In the following cases time (I) was deducted, and (II) was not deducted :

I.

(1.) Where suit rejected for non-production of Collector's certificate, sec 6, Act XXIII, 1871 — *Putali v. Tulja* (1)

(2.) Where suit filed in Subordinate Judge's Court returned seven months after as over-valued. — *Obhoy Churn v. Kritartha* (2) Similarly where plaint returned as under-valued by Munsiff. — *Chandi v. Jankaram* (3)

(3.) Where decree reversed on appeal as Court had no jurisdiction, and plaintiff filed plaint in proper Court — *Lucknaraun v. Khetetro* (4)

(4.) Where plaintiff sued co-talukdars in Revenue Court for arrears of rent, and suit dismissed for want of jurisdiction — *Gevindo v. Manson* (5).

(5.) Where second suit instituted before first suit decided in Court without jurisdiction, as long as pending — *Lee Morris v. Sapanthetha* (6).

(6.) Where plaintiff sued two defendants at Surat, but High Court refused leave to sue one of them, so plaintiff withdrew suit and filed it at Ahmedabad. — *Shekh Khandars v. Dahuabhai* (7)

(7.) Where appeal presented to Judge instead of Collector, High Court allowed thirty days to prefer appeal to Collector — *Maharani Audhisani v. Purikhit* (8), following *Kristo v. Roopmune* (9), *Erskine v. Ghulam* (10).

II.

(1.) Where the plaintiff was non-suited on appeal — *Chunder v. Ram Coomar* (11) (F. B., Pundit and Loch, JJ, dis.)

(2.) Where plaintiff sued the wrong party. — *Bhal v. Mussamat Gauri* (12), *Rajendro v. Bulakey* (13).

(3.) Where plaint returned before time expired to be presented in proper Court, and it was presented after time. — *Chegu v. Padata* (14)

(4.) Where first suit on 'khanam' right not successful, second suit on 'jeum' title not same cause of action — *Paraheet v. Edapally* (15).

(5.) Where separate suits for arrears of rent unsuccessful and then joint suit, not same cause of action, besides Court did decide first suits — *Lee Morris v. Chinnassami* (16)

(6.) Where two suits first brought to recover share of family property against two separate branches of the family, and then suit against all the sharers for a general partition. — *Jotaram v. Bai Singh* (17)

(7.) Where first suit brought in foreign Court having ample jurisdiction according to its own laws, though not according to law of British India — *Parry and Co v. Appasami* (18)

(1) I. L. R., 3 Bom., 223.

(2) I. L. R., 7 Calc., 284

(3) I. B. L. R., S. N., 12.

(4) 13 B. L. R., 146.

(5) 15 B. L. R., 56.

(6) 6 Mad. H. C. Rep., 45

(7) I. L. R., 3 Bom., 312.

(8) 7 B. L. R., 15.

(9) 6 W. R. (Act X Bul.), 56.

(10) 9 W. R., 520.

(11) B. L. R., Sup. Vol., 553.

(12) All. H. C. Rep., 1875, p. 281.

(13) I. L. R., 7 Calc., 367.

(14) 5 Mad. H. C. Rep., 407.

(15) 2 Mad. H. C. Rep., 226.

(16) 7 Mad. H. C. Rep., 242.

(17) 8 Bomb. H. C. Rep., A. C., 228.

(18) I. L. R., 2 Mad., 407

The bar created by sec. 374 of the Code of Civil Procedure when a suit or application is withdrawn with leave to bring a fresh one, is not removed by the section as causes for which the withdrawal of the suit or application may be permitted are not causes of a like nature with defect of jurisdiction.—*Pujade v. Pirjade* (1).

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Provisions of section do not apply to injunctions staying execution of decrees.—*Kalyan v. Gansham* (2)

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

On death of manager fresh right accrues to employer to sue for an account as against his representatives. Limitation runs from date of

(1) J. L. R., 6 Bom., 681.

(2) J. L. R., 5 Bom., 29.

administration taken out to manager's estate.—*Lawlers v. The Calcutta Landing and Shipping Co.* (1).

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application

(a) against the person guilty of fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Semble, that section applies only where fraud committed by person against whom right sought to be enforced.—*Ramdayal v. Adjhoothua* (2). Held, that the words “any document, necessary to establish such right, has been fraudulently concealed from him,” show that the document must have been fraudulently concealed from the knowledge of the plaintiff, and that he must, owing to such fraudulent concealment, have been unaware of its existence. What is a ‘necessary document’ considered.—*Mungamora v. Srnanant Raja* (3)

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

(1) I. L. R., 7 Cal., 627.

(2) I. L. R., 2 Cal., 1.

(3) 7 Mad. H. (1. Rep., 22.

Explanation 1.—For the purpose of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section ‘signed’ means signed either personally or by an agent duly authorized in this behalf.

Unregistered instrument, registration of which is compulsory, may be put in evidence as acknowledgment of debt for purposes of this section—*Nundo v Mussanat Ramsookhee* (1), *Khushalo v Behari* (2); but not as evidence of acknowledgment of title.—*Faki v. Khotu* (3).

Acknowledgment must be made within ordinary period of limitation, and when special law fixes period within that period.—*Purbuttinath v. Tejmomoy* (4), *Ramji v. Dharmma* (5).

Account stated, written by debtor, with his name at top, held ‘sufficiently signed.’—*Jekissan v. Samul* (6) For similar rulings, see *Muthura v. Babu* (7), *Audarji v. Dulabh* (8), *Kwaja Mahommed v. Venkatarayalu* (9).

Where authority of agent who had signed acknowledgment had, within the knowledge of the plaintiff, ceased before such signing, held not valid acknowledgment.—*Duomoyi v. Roy Luchmiput* (10). As to who is an authorized agent, what amounts to a sufficient acknowledgment, and what is a sufficient signature, see *Mohesh v. Busunt* (11).

A manager of joint Hindu family not agent authorized by his co-partners so as to bind them by acknowledgment.—*Kumurasami v. Pala* (12), *Gopal v. Muddomutty* (13). In *Chinnaya v. Gurunathan* (14) it was held, that the manager of a Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family, but has no power without special authority to revive a claim already barred by limitation against the family.

Attestation of record of rights as mortgagees, though mortgagors’ names omitted, held acknowledgment of the right of the latter to redeem.—*Dauchand v Sarfraz* (15) (F. B., Spankie, J, dis.) An application in execution of decree is an application in respect of a right, and

- (1) I. L. R., 5 Calc., 215.
- (2) I. L. R., 3 All., 523.
- (3) I. L. R., 4 Bom., 590.
- (4) I. L. R., 5 Calc., 303.
- (5) I. L. R., 6 Bom., 683.
- (6) I. L. R., 5 Bom., 89.
- (7) I. L. R., 1 All., 683.
- (8) I. L. R., 5 Bom., 88.

- (9) 2 Mad. H. C. Rep., 79.
- (10) L. R., 7 I. A. C. (Sup. Vol.), 8 (1879); C. L. R., 101.
- (11) I. L. R., 6 Calc., 340.
- (12) I. L. R., 1 Mrgl., 385.
- (13) 14 B. L. R., 21.
- (14) I. L. R., 5 Mad. (F. B.), 169.
- (15) I. L. R., 1 All., 117.

an application by a judgment-debtor for postponement of sale is "an acknowledgment of liability in respect of such right," and when signed by pleader expressly authorized to make it, is signed within the meaning of the section—*Ramkut v. Satgur* (1). Similarly held, where additional time to pay decree granted to judgment-debtor on a petition signed by his vakeel, object of words "application in respect of any property or right" is to extend to the application mentioned in sched. if the same privilege as is accorded to suits.—*Ram Coomar v. Takur* (2). For a ruling to the contrary, *re*, that the provisions of the section do not apply to applications for execution of a decree, see *Rama v. Venkatasu* (3).

In the following cases acknowledgments of debts were held (I) to be sufficient, and (II) to be insufficient.

I.

(1.) Payment endorsed on bond by direction of obligor and signed with his mark.—*Bheemangowda v. Evanah* (4).

(2.) Debt recited as due to plaintiff in a deed of sale executed by defendant.—*Madhusudhan v. Brajanath* (5).

(3.) Letter of maker of promissory notes to holder's agent, admitting making them.—*Mullins v. Beddy* (6).

(4.) Letter promising to pay principal of debts by instalments and asking to be let off interest.—*Shah Mukkhan Lall v. Nawab Imptiaz-ood-Dowlah* (7).

II.

(1.) Words in letter "Remittance of £40 to old account."—*Shearman v. Fleming* (8).

(2.) Letter containing no distinct admission of debt, but only vague expressions—*Gash v. McLean* (9).

(3.) Acknowledgments not direct from debtor, but to be deduced from tenor of letters. There must be some principal writing which can be relied on by itself—*Rogers v. Montrion* (10).

(4.) Letter—"If I have to stump up, the sooner the better, though it would go against all my ideas of justice and right"—*The U. S. Bank v. Marshall* (11).

(5.) Plaint in suit brought to compel creditor to accept instalments as they became due, setting out provisions of bond and stating that instalments tendered and refused.—*Narayanaappa v. Bhaskar* (12).

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay

(1) 1. L. R., 3 All. (F. B.), 247.

(2) 1. L. R., 8 Calc., 716.

(3) 1. L. R., 5 Mad., 171.

(4) 7 Mad. H. C. Rep., 358.

(5) 6 B. L. R., 299.

(6) All. H. C. Rep., 1874, p. 150.

(7) 10 Moo. I., (F. B.), 362.

(8) 5 B. L. R., 519.

(9) All. H. C. Rep., 1870, p. 403.

(10) 6 B. L. R., 550.

(11) All. H. C. Rep., 1874, p. 306.

(12) 7 Bomb. H. C. Rep., C., 125.

the debt or legacy, or by his agent, duly authorized in this behalf,

or, when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

The words 'prescribed period' related to the period of limitation, not to that for payment of debt.—*Ramsebuk v. Ram Lall* (1), 'per contra,' *Tarney v. Abdur* (2).

Where payments made in reduction of general balance of accounts, but no intimation that any of them were on account of interest, held, no payment of interest 'as such.'—*Hanmantmal v. Ramba* (3).

Where a mortgagee held a usufructuary mortgage for five years from 1858, and in 1861 leased lands to mortgagor, who paid rent till 1871. The mortgagee in 1877 sued to recover the mortgage-debt, which was repayable on the expiry of the five years, alleging that payment of rent up to 1871 was payment of interest. *Scemle*, that he might do this under the present law if it be held that payment of rent by the mortgagor is such a receipt of produce in virtue of a usufructuary mortgage as is to be deemed equivalent to a payment of interest.—*Pullingatta v. Abdul* (4).

The word 'debt' in the section applies only to a liability for which a suit can be brought, and does not include a liability for which judgment has been obtained—*Kally v. Heera* (5) [the soundness of this ruling doubted by Stuart, C. J., in *Itamhit v. Salgar* (6)].

Where subsequent to the adjustment of an account with the plaintiffs the defendants had been credited with surplus proceeds of goods sold and a 'hundi,' held, not 'payments' under section.—*Nurroji v. Muguram* (7).

Sums realized by execution-sale not 'part-payment' under section.—*Ramchandra v. Devba* (8).

(1) I. L. R., 6 Cal., 815.

(2) 2 C. L. R., 346.

(3) I. L. R., 3 Bom., 198.

(4) F. L. R., 3 Mad., 57.

(5) I. L. R., 2 Cal., 468.

(6) I. L. R., 3 All. (F. B.), 247.

(7) I. L. R., 6 Bom., 103.

(8) *Ibid*, 626.

21. Nothing in sections 19 and 20 renders one of

One of several joint contractors, &c, not chargeable by reason of acknowledgment or payment made by another of them.

several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of any other or others of them.

22. When, after the institution of a suit, a new plaintiff

Effect of substituting or adding new plaintiff or defendant.

or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when

he was so made a party.

Provided that, when a plaintiff dies, and the suit is con-

Proviso where original plaintiff dies.

tinued by his legal representative, it shall, as regards him, be deemed to

have been instituted when it was instituted by the deceased plaintiff:

Provided also that, when a defendant dies, and the suit is

Proviso where original defendant dies.

continued against his legal representative, it shall, as regards him, be

deemed to have been instituted when it was instituted against the deceased defendant.

Where plaint filed against wrong parties supposed to be representatives of deceased debtor, and after period expired true representatives substituted, held barred.—*Kavasjee v. Barjojee* (1).

Defendant may insist on all parties with whom he contracted being joined as plaintiffs. Where some only joined, and then at instance of defendant rest joined after period expired, suit barred as regards their rights and failed as brought by others alone.—*Ramsebak v. Ramlal* (2), *Boydonth v. Gish Chunder* (3) dissented from.

Where minor defendant made party to a suit after time, such minor being a joint purchaser with the other defendant of a share of an undivided estate,—held as suit barred against minor; its object being to invalidate the joint sale, it was not maintainable.—*Habibulla v. Achaihar* (4).

Section only applies to new plaintiffs or defendants added or substituted in suits, and not to new appellants or respondents substituted or added by Appellate Court after period for appeal expired.—*The Court of Wards v. Gaya Pershad* (5). Where plaintiff sued A and B, and got a decree against A alone, who appealed, the Appellate Court made B a respondent after the period for appeal by the plaintiff had expired,

(1) 10 Bomb. H. C. Rep., 224.

(3) I. L. R., 3 Calc., 26.

(2) I. L. R., 6 Calc., 815.

(4) I. L. R., 4 All., 145.

(5) I. L. R., 2 All., 107.

and allowing *A's* appeal gave the plaintiff a decree against *B*. Held barred by section.—*Ranjeet v. Sheo Pershad* (1).

Where property was in possession of several persons and plaintiff sued to recover from one only, and after period had expired joined the others, suit held barred as against them.—*Obbhoy v. Kutartha* (2).

To amend a plaint by making the plaintiff sue as attorney instead of on his own account, is a not a substitution of a new plaintiff so as to bar suit.—*Ganpat v. Adarji* (3).

23. In the case of a continuing breach of contract and
Continuing breaches in the case of a continuing wrong
and wrongs independent of contract, a fresh period
of limitation begins to run at every moment of the time
during which the breach or the wrong, as the case may be,
continues.

Obstructions to watercourses and drains are continuing wrongs, and the cause of action accrues 'de die in diem'—*Ponnusami v. The Collector of Madura* (4), *Subramanya v. Ramachandra* (5), *Rajrup v. Abdul* (6), *Punja v. Bai Kuvar* (7).

A covenant for quiet possession admits of a continuing breach.—*Raja Bala v. Krishnarao* (8).

The present Act is silent as to successive breaches of contract, and applies only to continuing breaches.—*Bhojraj v. Guesham* (9).

24. In the case of a suit for compensation for an act
Suit for compensation which does not give rise to a cause
tion for act not action- of action unless some specific injury
able without special actually results therefrom, the period
damage. of limitation shall be computed from
the time when the injury results.

Illustrations.

(a.) *A* owns the surface of a field. *B* owns the subsoil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

(b.) *A* speaks and publishes of *B* slanderous words not actionable in themselves without special damage caused thereby. *C* in consequence refuses to employ *B* as his clerk. The period of limitation in the case of a suit by *B* against *A* for compensation for the slander does not commence till the refusal.

(1) I. L. R., 2 All., 487.

(2) I. L. R., 7 Calc., 284.

(3) I. L. R., 3 Bom., 312.

(4) 5 Mad. H. C. Rep., 6.

(5) I. L. R., 1 Mad., 335.

(6) I. L. R., 6 Calc. (P. C.), 394.

(7) I. L. R., 6 Bom., 20.

(8) I. L. R., 2 Bom., 273.

(9) I. L. R., 4 All., 493.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(a.) A Hindu makes a promissory note bearing a native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b.) A Hindu makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

Bond bearing native date only made payable after month or year, date for payment to be computed by Gregorian calendar—*Nilkanth v. Dattatraya* (1); so too where specified that bond to be paid after four months—*Rungo v. Babaji* (2); see also *Mahommed Ellahce v. Brojokishore* (3).

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Where the access and use of light or air to and Acquisition of right for any building have been peaceably to easement. enjoyed therewith, as an easement and as of right, without interruption, and for twenty years, and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement, shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of

(1) I. L. R., 4 Bom., 103.

(2) I. L. R., 6 Bom., 83.

(3) I. L. R., 1 Calc., 497.

an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(a.) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1860, to 1st January, 1880. The plaintiff is entitled to judgment.

(b.) In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had asked his leave to enjoy the right. The suit shall be dismissed.

The provisions of the section do not exclude other modes of acquiring easements.—*Modhoooodhun v. Bissonath* (1), *Rajrup v. Ahul* (2), *Punja v. Bai Kuvar* (3), *Chara v. Dokowari* (4). Proper issues to be fixed where limitation pleaded in a suit to establish easement laid down.—*Achul v. Rajun* (5). Where during the required twenty years the owner of the dominant tenement had himself for some years permanently obstructed the use of the easement, held not ‘openly enjoyed.’—*Shama v. Turine* (6).

Where unity of possession in plaintiff of both dominant and servient tenements for seven years of period computed for prescription, held, enjoyment not ‘as of right,’ as no adverse exercise of it.—*Modhoooodhun v. Bissonath* (1). Permissive user not user as of right.—*Askar v. Romanath* (7), *Aukhoy v. Mollah Nabbee* (8), *Futteh v. Asghar* (9). Where building commenced after notice to plaintiffs before expiry of required twenty years, held, plaintiffs had acquired no easement, although as a matter of fact such building did not amount to an obstruction till after that time.—*Ellott v. Bhoobun* (10). Sufficient to acquire easement of light and air if building has assumed appearance of dwelling-house more than twenty years before suit, though house not completed or used for that time.—*Pranjvandass v. Myaram* (11). Date of windows being in a sufficiently finished state

(1) 15 B. L. R., 361.

(2) 1 L. R., 6 Cal. (P. C.), 394.

(3) 1 L. R., 6 Bom., 20.

(4) 1 L. R., 8 Cal., 956.

(5) 1 L. R., 6 Cal., 812.

(6) 1 L. R., 1 Cal., 422.

(7) 13 W. R., 344.

(8) *Ibid.*, 449.

(9) 17 W. R., 11.

(10) 12 B. L. R. (P. C.), 406.

(11) 1 Bomb. H. C. Rep., 148.

to create the right fixed as date of plaintiffs beginning to acquire right to easement—*Ellott v. Bhoobun* (1). Immaterial whether light and air admitted through window or door.—*Ratanji v. Edalji* (2). Law as to the acquisition of easements of light and air laid down *per* Littledale, J., in *Moore v. Raeson* (3), quoted in *Pranjivundass v. Myaram* (4).

Rights of way usually require continuous user to be kept alive—*Hurme v. Judoonath* (5); but a right of way over a person's land in the rainy season only may exist.—*Ramsoondur v. Woomakant* (6). Actual user of a right of way for boats in the rainy season within two years of suit not necessary to acquire right. It might be impossible to exercise right, but till right obstructed it could be peaceably enjoyed. Illustration (b) commented on as contrary to plain meaning of section.—*Koylash v. Sonatun* (7).

27. Provided that, when any land or water upon, over,

Exclusion in favor of reversioner of servient tenement.

or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over *B*'s land. *A* proves that he has enjoyed the right for twenty-five years; but *B* shows that during ten of these years *C*, a Hindu widow, had a life-interest in the land, that on *C*'s death *B* became entitled to the land, and that within two years after *C*'s death he contested *A*'s claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited

Extinguishment of right to property.

to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

(1) 12 B. L. R. (P.C.), 406.

(4) 1 Bomb H C Rep., 148.

(2) 8 Bomb. H. C. Rep., O. C., 181.

(5) 14 W. R., 79

(3) 3 Bran. and Cress., 340.

(6) 1 W. R., 218.

(7) 1 L. R., 7 Calc., 132.

Right to property other than land extinguished by this section, but *per* Garth, C.J., *quære* as to debts.—*Ram Chunder v. Juggutmon-mohikey* (1). Act XV of 1877 does not extinguish a debt, it only bars or discharges the remedy, clear from language of secs. 11 and 28, also from sec 60, Indian Contract Act.—*Nursingh v. Hurryhur* (2); see also *Mohesh v. Busunt* (3).

Non-payment of rent, if a tenancy is proved or admitted for a term of twelve years or more, does not give a tenant a title to the land. Failure to pay rent is a recurring cause of action, and therefore, where right to take it is proved or admitted, no question of limitation arises.—*Poresb v. Kassi* (4), *Rungolall v. Abdool* (5), *Premsookh v. Bhupia* (6) (F. B. Spankie, J., dis.), *Tiruchurna v. Sanguvien* (7). But a rent must have been fixed originally, otherwise if not fixed, and tenant holds on rent-free for more than twelve years, the landlord's rights both to resume the holding and to assess it to rent are barred under art. 130, sched. ii, and are, therefore, extinguished by this section, and the rent-free-holder acquires the land—*Abbhoy v. Kally* (8); and for the same principle see *Madonlu v. Bhagvanta* (9), *Ali Bux v. Roop Koor* (10), *Keval v. The Tuluchdari Settlement Officer* (11). Adverse possession for more than twelve years of immoveable property not only bars the remedy and extinguishes the right of the true owner, but also confers a good title on the trespasser—*Gunga Gornul Mundul v. The Collector of the 24-Pergunnahs* (12), *Gossau Dass v. Issun Chander* (13), *Bejoy Chunder v. Kally Prosonno* (14).

THE FIRST SCHEDULE.

(See Section 2.)

Number and year of Acts.	Title.	Extent of Repeal.
X of 1865 ..	The Indian Succession Act.	In section 321 the words "within two years after the death of the testator, or one year after the legacy has been paid"
IX of 1871 ...	The Indian Limitation Act, 1871.	The whole.
X of 1877 ...	The Code of Civil Procedure.	Section 599, and in section 601 the words "within thirty days from the date of the order."

(1) 1 L. R., 4 Cylc., 283.

(2) 1 L. R., 5 Calc., 897.

(3) 1 L. R., 6 Calc., 340.

(4) 1 L. R., 4 Calc., 661.

(5) *Ibid.* 314.

(6) 1 L. R., 2 All. (F. B.), 517.

(7) 1 L. R., 3 Mad., 119.

(8) 1 L. R., 5 Calc., 949.

(9) 9 Bomb. H. C. Rep., 260.

(10) All. H. C. Rep., 1870, p. 106.

(11) 1 L. R., 1 Bom., 586.

(12) 11 Moo. I A., 345.

(13) 1 L. R., 3 Calc., 224.

(14) 1 L. R., 4 Calc., 357.

THE SECOND SCHEDULE.

(See Section 4.)

Unless the contrary is stated, the reader should understand that the article applies to the case quoted under it. This will save a good deal of space and unnecessary reiteration.

FIRST DIVISION—SUITS.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part I.—Thirty days.		
1.—To contest an award of the Board of Revenue under Act No XXIII of 1863 <i>(to provide for the adjudication of claims to waste lands).</i>	Thirty days.	When notice of the award is delivered to the plaintiff.
Part II.—Ninety days.		
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days.	When the act or omission takes place.
Part III.—Six months.		
3.—Under the Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months	When the dispossession occurs.
4.—Under Act No. IX of 1860 <i>(to provide for the speedy determination of certain disputes between workmen engaged on Railway and other public works and their employers),</i> section one.	Ditto ...	When the wages, hire, or price of work claimed accrue or accrues due.
5.—Under the Code of Civil Procedure, Chapter XXXIX <i>(of summary procedure on negotiable instruments).</i>	Ditto ...	When the instrument sued upon becomes due and payable.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part IV.—One year.		
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan, or labourer not provided for by this schedule, No. 4.	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto ...	When the purchaser takes under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession when the instrument of sale is registered.

Suit held barred as, taking either time from which period runs, beyond time.—*Gulab v. Amar* (1) Held, where contract became completed on the payment of the purchase-money by a mortgagee in possession, that physical possession was obtained on date of such payment.—*Lachmi v. Sheonbar* (2). Limitation runs from date physical possession is taken of the whole of the property sold.—*Jaikaran v. Gungu* (3). Share in undivided zemindari not susceptible of physical possession. Limitation runs from registration of deed of sale.—*Unkar Das v. Narain* (4). Similarly held, where part of the property sold was a share of an undivided mehal, because article contemplates physical possession of whole of property sold.—*Bholi v. Imam* (5). Article does not apply to suit to enforce a right of pre-emption in respect of conditional sale of a share in an undivided mehal.—*Nath Prasad v. Ram Ratan* (6).

(1) I L. R., 2 All., 237.

(2) *Ibid*, 409.

(3) I L. R., 3 All., 175.

(4) I L. R., 4 All. (F. B.), 24.

(5) *Ibid*, 179.(6) *Ibid*, 218.

Description of Suit.	Period of limitation.	Time from which period begins to run
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Part IV.—One year.

11.—By a person against whom an order is passed under section 280, 281, 282, or 335 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order.	One year	The date of the order.
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Where goods illegally attached and sold after unsuccessful objection, owner not bound to sue to establish right, but may sue to recover them or their value; but such suit must be brought within one year after adverse order.—*Shiboo v. Muddun* (1), *Natubhar v. Kahi Dass* (2), *Kallu Mal v. Brown* (3).

The investigation prescribed in the Civil Procedure Code must take place, otherwise the article will not apply — *Venkatanara v. Akamma* (4), *Venkapa v. Chembazapa* (5). A refusal to postpone sale not an order contemplated by article. Suit to recover lands sold in execution brought more than a year after refusal to postpone sale, not barred.—*Sah Mukkun v. Sah Koondun* (6). Where property released on objection of defendant, and plaintiff sued to establish his right more than a year after order, held, that the plaintiff was a person against whom the order was given.—*Nechtom v. Mahachande* (7).

Order such as contemplated in Civil Procedure Code, unless overruled in regular suit brought within period allowed, is binding on all who are parties to it, and is conclusive.—*Budri v. Mahommed Yusuf* (8) (F. B. Pearson, J., dis.)

Where no objection preferred and plaintiff's property sold, ordinary limitation for suit to recover — *Lalchand v. Sukharam* (9); for a similar case see *Protap v. Brojolall* (10). Date on which order is signed, not that on which verbally made, to be computed from.—*Bupu v. Lakshman* (11).

(1) I. L. R., 7 Cal., 608.

(2) *Ibid.*

(3) I. L. R., 3 All., 504.

(4) 3 Mad. H. C. Rep., 139.

(5) I. L. R., 4 Bom., 21.

(6) 15 B. L. R. (P. C.), 228.

(7) 4 Mad. H. C. Rep. (F. B.), 472.

(8) I. L. R., 1 All., 381.

(9) 8 Bomb. H. C. Rep., A. C., 139.

(10) B. L. R., Sup. Vol., 638.

(11) 10 Bomb. H. C. Rep., 19.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part IV.—One year.

<p>12.—To set aside any of the following sales :—</p> <p>(a) sale in execution of a decree of a Civil Court ;</p> <p>(b) sale in pursuance of a decree or order of a Collector or other officer of revenue ;</p> <p>(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ;</p> <p>(d) sale of a patni taluq sold for current arrears of rent</p> <p><i>Explanation</i>—In this clause 'patni' includes any intermediate tenure saleable for current arrears of rent.</p>	One year	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
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Where suit to recover property in effect suit to set aside sale under (a), held barred as not brought within one year from date of sale.—*Abul v. Abdool* (1).

'Order' in (b) means order of the nature of a decree or made by the Collector or other Revenue officer in his judicial capacity. Where sale not made on such order, article would not apply.—*Sukharam v. The Collector of Ratnagiri* (2). Where sale under (c) fraudulently contrived by co-sharer who purchased 'benami' in name of son, and another co-sharer sued to have property reconveyed, held, article did not apply.—*Bhoobun v. Ram Soondur* (3).

Where suit to recover what has been taken in excess under colour of sale, article held not to apply.—*Mussamat Shureefatunnisa v. Lachmi* (4).

Suit under (c) must be brought within one year from date sale became final and conclusive.—*Raj Chandra v. Kinoo* (5). Suit in ejectment for possession of lands acquired under court-sale by defendant, held as plaintiff no party to decree or execution-proceedings, under which purchased, not barred under cl. (a).—*Venkata v. Subbamma* (6).

Article does not apply to suits in which plaintiff not a party to, and not bound by, the sale sought to be set aside.—*Sriman v. Yamuna* (7).

(1) I. L. R., 2 Calc., 98.

(2) 8 Bomb. H. C. Rep., A. C., 219.

(3) I. L. R., 3 Calc., 300.

(4) All. H. C. Rep., 1875, p. 288.

(5) I. L. R., 8 Calc., 329.

(6) I. L. R., 4 Mad., 178.

(7) I. L. R., 5 Mad., 54.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part IV.—One year.

13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year	The date of the final decision or order in the case by a Court competent to determine it finally.
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Suit to set aside a sale by certificated guardians with sanction of District Judge, under sec. 18, Act XL, 1858, held, not to fall under this article, but under art. 144.—*Sikher Chand v. Dulputty* (1).

14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year	The date of the act or order.
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Where plaintiff claimed land as 'peramboke,' of which a lease had been granted to defendant by Collector, suit held not to fall under article as not necessarily a suit to set aside an official act.—*Krishnamma v. Achayya* (2).

15.—Against Government to set aside any attachment, lease, or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	One year	When the attachment, lease, or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto	When the payment is made.

Where suit brought after several years' arrears, wrongfully recovered from plaintiff, held he could only recover one year's arrears.—*Bhajang v. The Collector of Belgaum* (3).

(1) 1. L. R., 5 Cal., 363.

(2) 1. L. R., 2 Mad., 306.

(3) 11 Bomb. II. C. Rep., 1.

Description of Suit,	Period of limitation.	Time from which period begins to run.
Part IV.—One year.		
17.—Against Government for compensation for land acquired for public purposes.	One year	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto ...	When the imprisonment ends.
20.—By executors, administrators, or representatives, under Act No. XII of 1855 (<i>to enable the executors, administrators, or representatives to sue and be sued for certain wrongs</i>).	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators, or representatives, under Act No. XIII of 1855 (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i>).	Ditto ..	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel	Ditto ...	When the libel is published.
25.—For compensation for slander.	Ditto ..	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.

Description of Suit	Period of limitation.	Time from which period begins to run.
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Part IV.—One year.

27.—For compensation for inducing a person to break a contract with the plaintiff.	One year	The date of the breach
28.—For compensation for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.

Part V.—Two years.

30.—Against a carrier for compensation for losing or injuring goods.	Two years	When the loss or injury occurs.
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Suits against carriers with whom there is no contract for loss to goods.—*Kaluram v. The Madras Railway Co.* (1). Where contract to deliver and loss not under this article, but under art. 115.—*The B. I. S. N. Co. v. Haji* (2).

31.—Against a carrier for compensation for delay in delivering goods.	Two years	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto ...	When the perversion first becomes known to the person injured thereby.
33.—Under Act No. XII of 1855 (<i>to enable executors, administrators, or representatives to sue and be sued for certain wrongs</i>) against an executor, administrator, or other representative.	Ditto ...	When the wrong complained of is done.
34.—For the recovery of a wife	Ditto ...	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Ditto ...	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part V.—Two years.

36.—For compensation for any malfeasance, misfeasance, or nonfeasance independent of contract and not herein specially provided for.	Two years	When the malfeasance, misfeasance, or nonfeasance takes place.
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Suit for value of crops carried away by defendant while in possession under his decree afterwards reversed, not under this article, but art. 109.—*Shurnomoyee v. Pattari* (1).

Part VI.—Three years.

37.—For compensation for obstructing a way or a watercourse.	Three years.	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.

Suit for an account of profits obtained by infringement of an exclusive privilege.—*Kimmond v. Jackson* (2).

41.—To restrain waste ...	Three years.	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, section 320 or 321, or under the Probate and Administration Act, 1881, section 139 or 140 (3), to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.

(1) I. L. R., 4 Calc., 625.

(2) I. L. R., 3 Calc., 17.

(3) Vide Act V of 1881, s. 156.

Description of Suit.	Period of limitation	Time from which period begins to run.
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Part VI.—Three years.

44.—By a ward who has attained majority, to set aside a sale by his guardian.	Three years.	When the ward attains majority.
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See *Prosonna v. Afzolonessa* (1).

45.—To contest an award under any of the following Regulations of the Bengal Code:— VII of 1822, IX of 1825, and IX of 1833.	Three years.	The date of the final award or order in the case
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Where proceeding of Settlement-officer not an award under Reg VII, 1822, he not having acted judicially as required by Regulation, held, suit not under article.—*Bhauni v. Maharaj* (2).

46.—By a party bound by such award to recover any property comprised therein.	Three years.	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of property made under the Code of Criminal Procedure, Chapter XL, or the Bombay Mamlatdars' Courts Act, or by any one claiming under such person, to recover the property comprised in such order.	Ditto ...	The date of the final order in the case.

Held, Magistrate's order retaining person in possession 'final order,' and not order of Sessions Court in a proceeding under secs. 295, 296, Criminal Procedure Code, confirming the same. Also that article related to immoveable, as well as to moveable, property.—*Kangali v. Zomuroodonissa* (3). Order of attachment not final order contemplated; so, where attachment and suit to recover land, article held not to apply.—*Akilandammal v. Periasami* (4). See also *Doonga v. Mungul* (5).

(1) 1. L. R., 4 Calc., 523.

(2) 1. L. R., 3 All., 738.

(3) 1. L. R., 6 Calc., 709

(4) 1. L. R., 1 Mad., 809.

(5) All. H. C. Rep., 1875, p. 35.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VI.—Three years.		
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years.	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
Where a final decree had been made for specific performance of an agreement of sale, held, suit not time-barred, as the right to possession of both the moveable and immovable property accrued on the date of such final decree, as from then detainer's possession became 'unlawful' — <i>Dhondiba v. Ramchandra</i> (1).		
50.—For the hire of animals, vehicles, boats, or household furniture.	Three years.	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit	Ditto ..	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given	Ditto ...	When the period of the proposed bill elapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant, where no fixed period of credit is agreed upon.	Ditto ...	The date of the sale.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years.	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.

Suit to recover balance where fluctuating accounts usually overdrawn against defendant.—*Hajee v. Mussamat Ashrafoonissa* (1).

60.—For money deposited under an agreement that it shall be payable on demand.	Three years.	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid

See *Sunkur v. Goury* (2).

62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years.	When the money is received.
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Suit for recovery of money obtained by fraud and collusion.—*Raghunon v. Nilmoni* (3).

Suit by decree-holder whose decree had been sold in execution against purchaser to recover what he had realized, the sale having been set aside — *Bhawani v. Rishi* (4).

Suit to recover as heir a moiety of moneys, the whole of which the other heir, the defendant, had received from a punker.—*Kundun v. Bansi* (5).

Suit by B to recover money he had refunded to A by the establishment of his prior right.—*Hankishan v. Bhowani* (6) (Stuart, C. J., and Spankie, J., dis.)

(1) I. L. R., 5 Cal., 759.

(2) *Ibid*, 321

(3) I. L. R., 2 Cal., 293.

(4) I. L. R., 2 All., 354.

(5) I. L. R., 3 All., 170.

(6) I. L. R., 1 All. (F. B.), 333.

Where the proprietor of a 'mohulla' sued a purchaser who had purchased under his own decree a house therein for one-fourth the purchase-money as his right by custom, held not under this article but art. 120.—*Kirath v. Ganesh* (1).

Where heirs sued alienee of Hindu widow to recover money paid him as compensation by Government for the value of lands alienated to him, held not under this art. but art. 120.—*Nundlall v. Meer Aboo* (2).

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VI.—Three years.		
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Three years.	When the interest becomes due.
Suit where difference between 6 per cent. and 4 per cent interest, at which latter rate bankers had calculated and paid over balance, sought to be recovered — <i>Makundi v. Balkishen</i> (3).		
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years.	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

Where suit brought on accounts stated not signed by defendant, held, suit for money lent and not under article.—*Thakuriya v Sheo Singh* (4), *Zulfikur v. Munna* (5).

The period for suits on accounts stated is the same whether accounts are stated verbally or in writing, and is governed by this article.—*Sheikh Akbar v. Sheikh Khan* (6). The learned Judges who gave this decision omitted to state how the time specified in the article from which the period begins to run could, in the case of a verbal account, be computed as directed in the article. From the direction on this point in the article it would appear that only written accounts are contemplated. A running account with balance sometimes in favour of, and sometimes against, the client, not an account under this article.—*Hajee v. Mussumat Ashrafoonissa* (7).

Part of suit held barred under article.—*Bheekha v. Rajroop* (8).

(1) I. L. R., 2 All., 358.

(2) I. L. R., 5 Calc., 597.

(3) I. L. R., 3 All., 328.

(4) I. L. R., 2 All., 872.

(5) I. L. R., 3 All., 148.

(6) I. L. R., 7 Calc., 256.

(7) I. L. R., 5 Calc., 759.

(8) I. L. R., 8 Calc., 912.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VI—Three years.		
65. — For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years.	When the time specified arrives or the contingency happens.
<p>Suit to recover money deposited on the understanding that it will be returned on the occurrence of a certain event.—<i>Johuri v. Thakoor</i> (1).</p> <p>Suit to recover on an indemnity-bond which defendant had given plaintiff against the misbehaviour of a third person, who subsequently embezzled.—<i>Shahpurji v. The Superintendent, Poonah Jail</i> (2).</p> <p>Where registered agreement that if land actually less on measurement than conveyed, there should be a proportionate refund of price paid,—held by Spunkie, J., of nature of suit in article, but agreement being registered fell under art. 116.—<i>Kishen Lall v. Kinloch</i> (3).</p>		
66.—On a single bond where a day is specified for payment	Three years.	The day so specified.
<p>Suit on bond payable after six months, interest being payable monthly, and clause, if default, creditor might realize whole amount due.—<i>Nanam v. Gouri</i> (4).</p> <p>Where bond registered, held, art. 116 applied.—<i>Gauri v. Surjee</i> (5), <i>Nobocoomar v. Siru</i> (6), <i>Ganesh v. Madhwarav</i> (7).</p> <p>Where bond besides money obligation contained a mortgage of immoveable property, held, that a suit to recover the money only did not fall under article as not on a single bond.—<i>Lachman v. Kesro</i> (8).</p>		
67.—On a single bond where no such day is specified.	Three years.	The date of executing the bond.
Article held not to apply to suit.— <i>Ball v. Stowell</i> (9).		
68.—On a bond subject to a condition.	Three years.	When the condition is broken.
Article held not to apply to suit.— <i>Ball v. Stowell</i> (9).		
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Three years.	When the bill or note falls due.

(1) I. L. R., 5 Calc., 830.

(2) 12 Bomb. H. C. Rep., 238.

(3) I. L. R., 3 All., 712.

(4) I. L. R., 5 Calc., 21.

(5) I. L. R., 3 All., 276.

(6) I. L. R., 6 Calc., 94.

(7) I. L. R., 6 Bom., 95.

(8) I. L. R., 4 All., 3.

(9) I. L. R., 2 All., 322.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VI.—Three years.		
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years.	When the bill is presented,
71.—On a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto ..	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto ...	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

Semhle, article does not apply to suit on verbal contract.—*Koylash v. Boykoonto* (1).

A subsequent acceptance of the instalment in arrear operates as a waiver, and suspends the law of limitation, but merely allowing the default to pass unnoticed does not.—*Cheni v. Kadum* (2).

Waiver must be an intentional act with knowledge, and it is incumbent on any party insisting on a verbal agreement in substitution of a written contract to show that both parties understood the substituted agreement.—*The Earl of Darley v. The L. C. & D. R. Coy.* (3), quoted in *Mumford v. Peal* (4), where it was held, that the subsequent receiving of payments after default did not constitute waiver, such

(1) I. L. R., 3 Calc., 619.

(2) I. L. R., 5 Calc., 97.

(3) L. J., 36 Exch., 404.

(4) I. L. R., 2 All., 857.

payments being in reduction of the whole debt and not on account of any particular instalments.

The obligee may waive the default, but the Courts have no authority to compel him to do so, as against the stipulation, that on default the whole sum due shall become payable at once, there is no relief in equity, such stipulation not being of nature of penalty, but only a method of securing payment.—*Raghoo v. Dipchand* (1).

When default made in payment of several instalments, but subsequently payments were made and accepted on account of them, held, limitation ran from date of first default of which no waiver.—*U. S. Bank v. Khettur* (2).

See art. 66—*Narain v. Gouri* (3): suit not under this article Where interest and premium of insurance payable at stated periods with stipulation, that in case of default the whole amount due under the bond should be payable at once, held, suit not under article.—*Ball v. Stowell* (4).

Article does not apply to the case of a decree in which instalments have been fixed and the decree-holder has waived the stipulation contained in the decree on default.—*Ugranuth v. Langanmoni* (5)

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VI.—Three years.		
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years.	The date of the delivery to the payee.
77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer	Ditto ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto ...	When the bill, note or bond becomes payable.

Suit on a single bond with a date specified for payment, the bond also containing a liability for immediate demand of the amount due on default of certain payments.—*Ball v. Stowell* (6).

(1) I. L. R., 4 Bom., 96.

(4) I. L. R., 2 All., 322.

(2) All. H. C. Rep., 1874, p. 88.

(3) I. L. R., 5 Calc., 21.

(5) I. L. R., 4 All., 83.

(6) I. L. R., 2 All., 322 (per Spankie J., p. 331).

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

81.—By a surety against the principal debtor.	Three years.	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto ...	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damaged.

Suit where lessee, having been sued by lessor, and having made good decree, for repairs which his sublessees were bound by their sublease to execute, in turn sued his sublessees. Held, that the time the plaintiff was 'actually damaged,' was when the lessor recovered against him.—*Bepin v. Chunder* (1).

Where defendant executed a bond of indemnity in case of the misbehaviour of a third party, who subsequently embezzled,—held, date of embezzlement date plaintiff 'damaged.'—*Shahpurji v. The Superintendent, Poonah Jail* (2).

84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Three years.	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
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Suit, where solicitor retained to execute a decree brought a suit to recover his costs. A prohibitory order had been issued and nothing more done by him, the parties a year after settling the case out of Court without his knowledge. Held, though brought more than three years after such settlement, not barred.—*Hearn v. Bapu* (3).

85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
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There must be cross-demands, the striking of the balance between which constitutes a new consideration for the promise on the part of the person against whom the balance is found to pay it.—*Hurgopal v. Abdul* (4).

(1) I L. R., 5 Cal., 811.

(2) 12 Bomb. H. C. Rep., 238.

(3) I. L. R., 1 Bom., 505.

(4) 9 Bom. H. C. Rep., 429.

Article intended to apply to cases where accounts have been going on between two parties and balances struck showing amount due from one of such parties.—*Lalji v. Raghonundun* (1).

Acknowledgment in unregistered deed admitted in evidence in suit falling under article.—*Khushalo v. Behari* (2)

Where a person deposited money with a banker and drew on it, and sometimes the balance was in her favour and sometimes against her, and the banker rendered monthly accounts showing balance due,—held, suit did not fall under article.—*Hajee v. Mussamat Ashrafoonnissa* (3)

Suit, where there was an account between principal and agent with mutual items of credit and debit, and a stipulation that the principal, on adjustment of accounts, should pay the balance due for such balance.—*Watson v. Aga Mehdee* (4)

Suit for balance due on 'hundi' transactions in which at first the account fluctuated, sometimes being in favour of the plaintiff and sometimes of defendant, though subsequently always in favour of plaintiff.—*Narrundass v. Vissandass* (5).

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VI.—Three years.		
86.—On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Three years.	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premium paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto ...	When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	Ditto ditto.

See *Kally v. Dukhee* (6).

(1) I. L. R., 6 Calc., 417.
 (2) I. L. R., 3 All., 523.
 (3) I. L. R., 5 Calc., 759.

(4) L. R., 1 I. A., 346 (1874).
 (5) I. L. R., 6 Bom., 134.
 (6) I. L. R., 5 Calc., 692.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

90.—Other suits by principals against agents for neglect or misconduct.	Three years.	When the neglect or misconduct becomes known to the plaintiff.
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See *Kally v. Dukhee* (1).

91.—To cancel or set aside an instrument not otherwise provided for.	Three years.	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
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Words “when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him” held to mean “who—having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit.”—*Jawangar v. Kura* (2).

Where suit to set aside sale by certificated guardians under sec. 18, Act XI, 1858, with permission of District Judge, held not to fall under this article.—*Sikher v. Dulputty* (3).

92.—To declare the forgery of an instrument issued or registered.	Three years.	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto ...	The date of the attempt.

Where a defendant had appealed to the Privy Council, and a third party applied to be added as a respondent, on the ground that, by registered deed, the plaintiff had conveyed him a share of the property decreed, the defendant objected to the deed as a forgery, but the third party was made a respondent ‘without prejudice’ held, in a subsequent suit by the defendant against the third party to have the deed set aside that the suit was barred, as the setting up of the deed constituted ‘an attempt to enforce it,’ such attempt being more than three years before the suit was brought.—*Fakharuddin v. The Official Trustee of Bengal* (4) (and other appeals).

94.—For property which the plaintiff has conveyed while insane.	Three years.	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or other relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.

Article not intended to apply to suits for possession of immoveable

(1) I. L. R., 5 Calc., 692.

(3) I. L. R., 5 Calc., 363.

(2) I. L. R., 3 All., 394.

(4) I. L. R., 8 Calc., 178.

property when fraud is part of the machinery by which defendant has kept plaintiff out of possession, but to cases where party has been fraudulently induced to enter into some transaction, execute some deed or do some act, and desires to be relieved from consequences.—*Chander Nath v. Tirthanand* (1).

Article held not to apply where suit not for relief on the ground of fraud, but for breach of contract to indemnify against fraud.—*Shapurji v. The Superintendent, Poonah Jail* (2).

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

96.—For relief on the ground of mistake.	Three years.	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto ...	The date of the failure.

Suit to recover an advance, which was made on the defendant agreeing to execute a 'ticca jur-i-peshgi' lease, which he failed to do. Suit being brought more than five years after the failure to execute lease, held barred.—*Ramphal v. Jafir* (3).

98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years.	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the plaintiff's advance in excess of his own share.

Suit to recover share of Government revenue, plaintiff having paid the whole to save estate from sale, and asking for such share to be made a charge on the portion for which paid. Held, art. 132, and not this article, applied.—*Ram Dutt v. Horakh* (4).

100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years.	When the right to contribution accrues.
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(1) 1. L. R., 3 Cal., 509.

(2) 12 Bomb. H. C. Rep., 238.

(3) All. H. C. Rep., 1875, p. 199.

(4) 1. L. R., 6 Cal., 549.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

101.—For a seaman's wages.	Three years.	The end of the voyage during which the wages are earned
102.—For wages not otherwise expressly provided for by this schedule.	Ditto ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Ditto ...	When the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ..	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Ditto ...	The date of the payment.
108.—By a lesser for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff, which have been wrongfully received by the defendant.	Ditto ...	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.

Suit for value of standing crops, where defendant got a decree for arrears of rent and ejectment and evicted plaintiff and carried away

standing crops, such decree being set aside on appeal.—*Surnomoye v Puttari* (1) (see art 36).

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

110 For arrears of rent ...	Three years.	When the arrears become due.
111 —By a vendor of immovable property to enforce his lien for unpaid purchase-money.	Ditto ..	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112 —For a call by a company registered under any Statute or Act	Ditto ...	When the call is payable.
113 —For specific performance of a contract.	Ditto ...	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

Suit held not to fall under article, but to be one to obtain possession in virtue of the right and title conveyed to the purchasers to which art. 136 or 144 applied.—*Sheo Pershad v Udu* (2)

Suit against an executor to compel transfer and registration of shares in a company which stood in testator's name, but for which plaintiffs had paid, and had received dividend during his lifetime.—*Ahmed v. Adjein* (3).

Suit to obtain a 'pottah' under an agreement to grant in 1858, finally refused in 1875.—*The New Beerbhoom Co. v Buloram* (4)

Where agreement in 1861 to hold house partly in common and partly separate with stipulation, that if one party wished to leave house he was bound to offer share to other at fixed price; or if one wished to purchase share of other, and other refused, the latter was bound to buy the other's share Held, no cause of action till demand, when limitation began to run, and that specific performance should be granted in alternative.—*Virasami v. Ramasami* (5).

114 —For the rescission of a contract,	Three years.	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
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(1) I. L. R., 4 Calc., 625.

(3) I. L. R., 2 Calc., 323.

(2) I. L. R., 2 All., 718.

(4) I. L. R., 5 Calc., 175.

(5) I. L. R., 3 Mad., 87.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VI.—Three years.

115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years.	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
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Suit to recover by way of compensation from the defendant, who had married the plaintiff's deceased brother's widow, money expended by the family on her first marriage, based on tribal custom.—*Madda v. Sheo Bahsh* (1)

Suit for loss and damage to goods based on breach of contract to deliver.—*The B. I. S. N. Co. v. Haji* (2).

Part VII.—Six years.

116.—For compensation for the breach of a contract in writing registered.	Six years	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
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Suit to recover money due on registered bond.—*Nobocomar v. Suru* (3), *Gauri v. Surji* (4), *Husain v. Hafiz* (5), *Mugaluri v. Narayana* (6), *Ganesh v. Madhab Rao* (7)

Suit to recover arrears due on a registered contract.—*Vythilinga v. Thetchamamuti* (8)

Suit to recover money where registered agreement, in which stipulated, that if land less on measurement than entered in conveyance, there should be a proportionate refund of price.—*Kishen v. Kinlock* (9).

117.—Upon a foreign judgment as defined in the Code of Civil Procedure.	Six years	The date of the judgment.
118.—To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	Ditto ..	When the alleged adoption becomes known to the plaintiff
119.—To obtain a declaration that an adoption is valid.	Ditto ...	When the rights of the adopted son as such are interfered with.

(1) I. L. R., 3 All., 385.

(2) I. L. R., 3 Mad., 107.

(3) I. L. R., 6 Calc. 94.

(4) I. L. R., 3 All., 276

(5) I. L. R., 3 All. (F. B.), 600.

(6) I. L. R., 3 Mad., 359

(7) I. L. R., 6 Bom., 75.

(8) I. L. R., 3 Mad., 76.

(9) I. L. R., 3 All., 712.

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part VII.—Six years.

120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto ...	When the right to sue accrues.
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See *Kally v. Dukkee* (1).

Suit for exclusive right to worship an idol.—*Eshan v. Mohmmahnee* (2).

Suit, where lessee in contravention of a clause of lease dug a tank, by lessor to compel him to fill up tank or pay compensation.—*Kedurnath v. Khetturpaul* (3).

See art. 62.—*Kirath v. Ganesh* (4), *Kundun v. Bans* (5) (this article held not to apply).—*Nund Lall v. Meer Aboo* (6).

Suit for recovery of arrears of professional tax under Act III, 1871 (Madras)—*The President of the Municipal Committee, Gundoor v. Srihakulapu* (7).

Suit to enforce a right of pre-emption in respect of a conditional sale of a share in an undivided mehal.—*Nath Prashad v. Ram Puttam* (8), followed in *Rasik v. Gujraj* (9).

Part VIII.—Twelve years.

121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a <i>patni taluq</i> or other saleable tenure sold for arrears of rent.	Twelve years.	When the sale becomes final and conclusive.
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Interpretation of 'avoid' is "to do something in the way of avoidance."—*Unnoda v. Mothura* (10).

122.—Upon a judgment obtained in British India, or a recognizance.	Twelve years.	The date of the judgment or recognizance.
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Suit based on decree, 1848, executed regularly up to 1867, brought in 1877, decree held analogous to instalment decree, and made as against defendant in 1867, because it then on his father's death became operative against him. Where instalments prescribed by order of Judge, each instalment's limitation runs from date it becomes due.—*Sakkaran v. Ganesh* (11).

(1) I. L. R., 5 Calc., 692.

(2) I. L. R., 4 Calc., 683.

(3) I. L. R., 6 Calc., 34.

(4) I. L. R., 2 All., 358.

(5) I. L. R., 3 All., 170.

(6) I. L. R., 5 Calc., 597.

(7) I. L. R., 3 Mad., 124.

(8) I. L. R., 4 All. (F. B.), 218.

(9) I. L. R., 4 All., 414.

(10) I. L. R., 4 Calc., 860.

(11) I. L. R., 3 Bom., 193.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VIII.—Twelve years.		
123.—For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate.	Twelve years.	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto ..	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.

Suit, where plaintiff claimed office of 'dharmakarta,' held barred.—*Manally v. Mangadu* (1).

125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan, who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage	Twelve years.	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Ditto ...	When the alienee takes possession of the property.
127.—By a person excluded from joint family property to enforce a right to share therein.	Ditto ...	When the exclusion becomes known to the plaintiff.

Article pre-supposes the existence of joint family property, and that there has been an exclusion from participation in the enjoyment of it.
—*Shroda v. Dogumoyee* (2).

In a suit to obtain a share by partition of joint family property, the interest of the plaintiff's father having been sold in execution of decree, limitation to be computed from time when exclusion from share first became known to them.—*Issuridutt v. Ibrahim* (1).

In a suit for partition time would not run against the plaintiff until his exclusion (if he was excluded) 'became known to him'—*Hari v. Maruti* (2).

Description of Suit.	Period of limitation	Time from which period begins to run
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Part VIII.—Twelve years.

128.—By a <i>Ilipdu</i> for arrears of maintenance.	Twelve years.	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto ...	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto ...	When the right to resume or assess the land first accrues.

Where there is a grant of a 'mokurari lease' in lieu of maintenance, if the grantor, or any of his successors, receives distinct notice of a claim on the part of the grantee to hold in perpetuity and allows twelve years to go by without contesting it, he at all events will be barred for the time of his own enjoyment—*Petumber v. Nilmoney* (3)

Where a grant is the grant of an office remunerated by use of land, the right to assess is barred by the possession of a person not claiming under the grantee for more than twelve years after the right to assess accrues—*Keoul v. The Talukdari Settlement Officer* (4).

Where no rent has ever been fixed on or paid for a tenure, and the holder has been in possession for more than twelve years, he is entitled to hold rent-free.—*Abbhoy v. Kally* (5); see also *Madvalu v. Bhugvanth* (6),—*Ah Buz v. Roop Koor* (7).

Auction-purchaser or purchaser at revenue-sale would have twelve years from date cause of action arose to resume 'lakheraj' holding—*Koylashbhashini v. Gocoolman* (8).

131.—To establish a periodically recurring right.	Twelve years.	When the plaintiff is first refused the enjoyment of the right
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Suit to worship idol one-sixth of the year.—*Eshan v. Monmoonnee* (9), followed in *Gopeekshen v. Thakoordass* (10).

(1) I. L. R., 8 Calc., 653.

(2) I. L. R., 6 Bom., 741.

(3) I. L. R., 3 Calc., 793.

(4) I. L. R., 1 Bom., 586.

(5) I. L. R., 5 Calc., 949.

(6) 9 Bomb. H. C. Rep., 260.

(7) All. H. C. Rep., 1870, p. 106.

(8) I. L. R., 8 Calc., 230.

(9) I. L. R., 4 Calc., 683.

(10) I. L. R., 8 Calc., 230.

Description of Suit.	Period of limitation.	Time from which period begins to run
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Part VIII.—Twelve years.

<p>132.—To enforce payment of money charged upon immoveable property.</p> <p><i>Explanation</i>—The allowance and fees respectively called <i>malikana</i> and <i>haggs</i> shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.</p>	<p>Twelve years.</p>	<p>When the money sued for becomes due.</p>
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Suit for malikana, which is an annually recurring charge.—*Hurmagi v. Hudanarayan* (1).

See art. 62.—*Kirath v. Ganesh* (2). See art. 99.—*Ramdutt v. Horakk* (3).

Article meant to apply to suits brought to enforce against the property payment of "money charged upon immoveable property," and not to a suit for a money-decree, though suit brought to recover money secured by a mortgage of immoveable property with a personal undertaking to pay.—*Pestonji v. Abdool* (4). This was overruled in *Lallubhai v. Narin* (5); the limitation being held to be twelve years, and the article to apply.

Where both personal charge and charge on immoveable property are sought to be enforced, limitation is twelve years—*Taneswar v. Mahabhar* (6).

Suit to enforce his lien by a mortgagee who had got a decree against property on his lien, and attached it against the purchaser at another execution-sale, who was in possession, and who, having objected, had got it released.—*Rudho v. Mussamat Roop Kuar* (7).

<p>133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary, or pawnee for a valuable consideration.</p>	<p>Twelve years.</p>	<p>The date of the purchase.</p>
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(1) I. L. R., 5 Calc., 921.

(2) I. L. R., 6 Calc., 549.

(3) I. L. R., 2 All., 358.

(4) I. L. R., 5 Bom., 463.

(5) I. L. R., 6 Bom. (F. B.), 719.

(6) I. L. R., 1 Calc. (P. C.), 163.

(7) All. H. C. Rep., 1875, p. 223.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VIII.—Twelve years.		
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration	Twelve years.	The date of the purchase.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto ...	When the vendor is first entitled to possession
See at 113.— <i>Sheo Pershad v. Udar Singh</i> (1).		
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years	When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Ditto .	The date of the sale.
See <i>Konjo v. Nobo</i> (2).		
139.—By a landlord to recover possession from a tenant.	Twelve years.	When the tenancy is determined.
140.—By a remainderman, a reversioner (other than a landlord), or a devisee, for possession of immoveable property.	Ditto ...	When his estate falls into possession.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VIII.—Twelve years.		
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years.	When the female dies.

The right of the Hindu or Mahomedan female to the possession of the immoveable property must be one '*in esse*' at the time of her death, for the determination of the right in her lifetime extinguishes also the right of the reversioner on her death.—*Saroda v Dayamoyee* (1), following *Nobin Chunder v Guru Pershad* (2), which was approved in *Amritolall v. Rajonkant* (3). In the above Full Bench ruling, however, this exception was laid down to the general proposition enunciated, viz., that the rule would not apply to alienations made by a Hindu widow while in possession of the estate.

In *Pursat v. Palut* (4) it was held, that under the article a suit by reversioners would not be barred unless it was brought more than twelve years from the death of the last female entitled to the succession.

142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years.	The date of the dispossession or discontinuance.
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Where defendant originally in permissive possession on ground of charity or relationship, the owner, who has accorded such possession, cannot be said to have discontinued possession, and the suit falls under art 144.—*Govind v. Debendronath* (5).

'Dispossession' or 'discontinuance of possession' is that which occurs when property is taken actual possession of by another, not where property is submerged by the act of God.—*Per White, J, Kally v. The Secretary of State* (6).

'Discontinuance' means an abandonment of possession by one person, followed by the actual possession of another person, otherwise there would be no one in whose favour the Statute would run. To constitute it there must be both dereliction by the person who has the right and actual possession, whether adverse or not, to be protected —

(1) 1 L. R., 5 Calc., 938.

(2) 3 L. R., Sup Vol (F B.), 1008.

(3) 15 B. L. R. (P. C.), 10.

(4) 1 L. R., 8 Calc., 412.

(5) 1 L. R., 6 Calc., 311.

(6) *Ibid*, 723.

- Per* Blackburne, J., *McDowell v. McKinty* (1). "There must be both absence of possession by the person who has the right and actual possession by another, whether adverse or not, to bring the case within the Statute."—*Per* Parke, B., *Smith v. Lloyd* (2). These decisions were followed in *Pandurang v. Bulkrishna* (3), *Sagangowda v. Bassapa* (4), where it was held, that the cause of action arose not when the plaintiff's possession ceased, but when another person's possession began.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part VIII—Twelve years.		
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years.	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto ..	When the possession of the defendant becomes adverse to the plaintiff

'Adverse possession' has been defined to be "possession by a person holding the land on his own behalf or of some person other than the true owner. The true owner having a right to immediate possession"—*Per* Markby, J., *Bejoy Chunder v. Kally Prosonno* (5).

Adverse possession to succeed must be the same kind of possession as that claimed. Where, therefore, full proprietary possession was claimed and adverse possession was set up as a defence—held, that adverse possession of the nature of the possession claimed had only been held from the date of the redemption of the mortgage, the mere fact that the defendants had before that received 'mahkama' from the mortgagee in possession from all share in which they had excluded the plaintiff not constituting adverse possession of such a nature as would bar the plaintiff's claim for full proprietary possession.—*Ummunissa v. Mahommed Yai* (6), (Spankie, J., dis.)

Adverse possession for more than twelve years bars the remedy, extinguishes the right of the true owner, and confers a good title on the wrong-doer—*Gunga Govind Mundul v. The Collector of the 24-Pergunnahs* (7), *Gossain Dass v. Issur Chunder* (8), *Bejoy Chunder v. Kally Prosonno* (5).

Mere assertion of adverse title by mortgagee does not abbreviate period allowed to mortgagor to bring suit to redeem.—*Sheopal v. Khadam* (9), *Ali Mahommed v. Lattu* (10), *Tanji v. Naganma* (11).

(1) 10 Ir. R., 514.

(2) 9 Exch., 562.

(3) 6 Bom. H. C. Rep., A. C., 125.

(4) 9 Bom. H. C. Rep., 62.

(5) 1 L. R., 4 Cal., 327.

(6) 1 L. R., 3 All. (F. B.), 24.

(7) 11 Moo. I. A. (P. C.), 345.

(8) 1 L. R., 3 Cal., 224.

(9) All. H. C. Rep., 1875 (F. R.) p. 220.

(10) 1 L. R., 1 All., 655.

(11) 3 Mad. H. C. Rep., 137

Where a third person not claiming under mortgagor is in possession of mortgaged land, his possession is adverse to the mortgagee—*Sheombur v. Bhownadeen* (1), and to the mortgagor also as well as to the mortgagee—*Amma v. Ramakrishna* (2), where it was held, that the contention that so long as the mortgagor is entitled to the equity of redemption, there could be no invasion of his right, could not be listened to, there being cases in which the rights and interests of both mortgagee and mortgagor were equally invaded, and the law of limitation would apply to both. In *Vithoba v. Gungaram* (3), *per contra*, it was held, that the possession of a trespasser, who had ousted the mortgagee in possession, was not adverse to the mortgagor, who could sue to redeem after ~~the~~ ^{an} expiry of more than twelve years from the trespass, because the trespasser only acquired the estate the mortgagee possessed. This would appear much the soundest law, as the trespasser, by adverse possession, acquires the title of the mortgagee, *i.e.*, a right to hold possession subject to the right of the mortgagor to redeem within the period allowed by law. It is difficult to see what remedy a mortgagor out of possession could have against a trespasser who has ousted his mortgagee, as the mortgagee would be the only person legally entitled to sue the trespasser for possession, if his remedy by a suit to redeem is confined to twelve years in lieu of the period allowed by law, *viz.*, sixty years.

When a mortgagor assigns his right to a third person, no distinct title adverse to the mortgagor is created—*Chunay v. Chulambaram* (4).

Where a person *bonâ fide* purchased from another as his own property land in fact mortgaged and obtained possession, his title was held adverse to that of the mortgagee.—*Brajanath v. Khilatchudra* (5). Similarly held in case of purchaser at an auction-sale in execution of decree.—*Srimati v. Dhanandru* (6), *Deenonath v. Nursing* (7).

Mortgagor holding on after stipulated period and paying interest to mortgagee, possession not adverse to latter.—*Manku v. Sheekh Mannoo* (8).

As long as a mortgagor, or those who claim under him, asserts a title to redeem and advances no other title inconsistent with it, his or their possession is *primâ facie* not adverse to the mortgagee.—*Praunath v. Rookia* (9).

Something must be done to render the friendly possession in the case of mortgagee and mortgagor adverse.—*Vanneri v. Pattanattil* (10).

Adverse possession, which extinguishes the right of the hen in her lifetime, equally extinguishes that of the reversioner after her death.—*Saroda v. Dayamoyee* (11).

Where, in 1824, a Hindu widow assumed to adopt a son to her husband, and such son and afterwards his heir, the defendant, were put in possession by her of the property in the suit, and the widow died

(1) All. H. C. Rep., 1870, p. 233.

(2) I. L. R., 2 Mad., 226.

(3) 12 Bomb. H. C. Rep., 180.

(4) I. L. R., 2 Mad., 212.

(5) 8 B. L. R., 109.

(6) 8 B. L. R. (P. C.), 222.

(7) 17 B. L. R., 85.

(8) 14 B. L. R., 315.

(9) 7 Moo I. A. (P. C.), 323.

(10) 2 Mad. H. C. Rep., 382.

(11) I. L. R., 5 Calc., 938.

in 1861, the reversionary heirs sued to recover the property, and have the adoption declared illegal in 1861. Held, that the possession of the son and afterwards of his heir during her lifetime was not adverse to the widow — *Srimati v. Mahesh* (1).

Where a daughter sued to recover property inherited from her father, which the defendants had taken possession of during the lifetime of her mother, held, cause of action accrued on death of mother, and right being derived from father, adverse possession against mother not adverse against daughter. — *C. Atchamma v. Subbarayadu* (2).

If once a relation of landlord and tenant is established, although there may not have been any payment of rent for more than twelve years, there is no possession in the tenant adverse to the landlord, and it would be for the tenant to establish the determination of the tenancy over and above the mere failure to pay rent — *Priemsukh v. Bhupia* (3) (F. B. Spruick, J., dis.), *Tiruchurna v. Sanguvien* (4), *Rango Lall v. Abdul Ghuffoor* (5), *Poresb Narain v. Kassi Chunder* (6).

If no rent has ever been fixed, and the holder of the tenure has been in possession for more than twelve years, his possession would be adverse to the landlord, and he would be entitled to hold rent-free, and have acquired a title to the land — *Abbhoy v. Kolly Pershad* (7), *Madralu v. Bhagvanth* (8), *Ah Bur v. Roop Koor* (9).

The possession of property by a trustee becomes adverse when there has been a demand on the part of the person, who has entrusted it to him, for delivery, and a refusal on his part to restore it, and limitation runs from the date of such refusal. — *Rakhaldass v. Madhusuddhan* (10).

Where there has been no regular partition, but joint owners have, among themselves, broken up the joint property, and exclusively enjoyed the profits of the portions, the property being invariably recorded as joint, there is no possession of one joint owner adverse to that of another, and such possession would be without prejudice to the common rights of all or to the rights of each or any to enforce at pleasure a partition of the whole. — *Yusuf Ali v. Chabba Singh* (11).

Description of Suit.	Period of limitation.	Time from which period begins to run.
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Part IX.—Thirty years.

145.—Against a depository or pawnnee to recover moveable property deposited or pawned.	Thirty years.	The date of the deposit or pawn.
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(1) 4 B. L. R. (F. B.),

(2) 5 Mad. H. C. Rep., 428.

(3) I. L. R., 2 All., 517.

(4) I. L. R., 3 Mad., 119.

(5) I. L. R., 4 Cal., 314.

(6) I. L. R., 4 Cal., 661.

(7) I. L. R., 5 Cal., 949.

(8) 9 Bom. H. C. Rep., 260.

(9) All. H. C. Rep., 1870, p. 106.

(10) 3 B. L. R., A. C., 409.

(11) All. H. C. Rep., 1873, p. 122.

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part IX.—Thirty years.		
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years.	When any part of the principal or interest was last paid on account of the mortgage-debt.

Part X.—Sixty years:

147.—By a mortgagee for foreclosure or sale.	Sixty years	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto ...	When the right to redeem or to recover possession accrues. Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May 1862, shall be governed by the rules of limitation in force in that province immediately before the same day.

The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot estop him from asserting those rights if they do exist at any time within sixty years.—*Juggurnath v. Syud Shah* (1).

More assertion of adverse title by mortgagee does not abbreviate period allowed mortgagor to bring suit to redeem.—*Tangi v. Nagamma* (2), *Sheopal v. Khadim Hossein* (3), *Ali Mahommed v. Latta Buksh* (4).

A suit to redeem by the mortgagor of mortgaged premises held by a mortgagee under a 'gahan lahan' mortgage is not barred by the latter's possession for more than twelve years after the date, when, according to the bond, the mortgage is to be converted into a sale.—*Krishnaji v. Raoji* (5).

(1) 14 B. L. R. (P. C.), 385.

(3) All. H. C. Rep., 1875 (F. B.), 220.

(2) 3 Mad. H. C. Rep., 137.

(4) I. L. R., 1 All., 685.

(5) 9 Bom. H. C. Rep., 79.

Article applies to suits for redemption instituted against mortgagees or persons claiming under them except purchasers for value, but not to suits against strangers, nor to suits which are not suits for redemption—*Amma v. Ramakrishna* (1). For contrary view, where mortgagor sued to redeem property in possession of a stranger who had ousted mortgagee and acquired a title, see *Vithoba v. Ganguram* (2) (cf. art. 144).

Description of Suit.	Period of limitation.	Time from which period begins to run.
Part X.—Sixty years.		
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Sixty years.	When the period of limitation would begin to run under this Act against a like suit by a private person.

The Government, or an auction-purchaser claiming under Government, must sue within sixty years from the date the cause of action arose to resume 'lakheraj' land.—*Koylashbushin v. Gocoolman* (3).

SECOND DIVISION—APPEALS.

150.—Under the Code of Criminal Procedure from a sentence of death passed by a Sessions Judge	Seven days	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.
152.—Under the Code of Civil Procedure to the Court of a District Judge	Thirty days.	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto ...	The date of the order refusing the certificate.
154.—Under the Code of Criminal Procedure to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed against.
155.—Under the same Code to a High Court except in the cases provided for by Nos. 150 and 157	Sixty days	The date of the sentence or order appealed against.

(1) I. L. R., 3 Mad., 226.

(2) 12 Bom. H. C. Rep., 180.

(3) I. L. R., 8 Calc., 230.

Description of Appeal	Period of limitation	Time from which period begins to run.
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SECOND DIVISION—APPEALS

156.—Under the Code of Civil Procedure to a High Court except in the cases provided for by No 151 and No. 153.	Ninety days	The date of the decree or order appealed against.
157.—Under the Code of Criminal Procedure from a judgment of acquittal.	Six months	The date of the judgment appealed against.

THIRD DIVISION—APPLICATIONS.

158.—Under the Code of Civil Procedure to set aside an award.	Ten days	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under Chap. XXXIX of the Code of Civil Procedure.	Ditto ..	When the summons is served
160.—For an order under section 629 of the same Code restoring to the file a rejected application for review.	Fifteen days.	When the application for review is rejected.
161.—For an order under section 258 of the same Code compelling a decree-holder to certify payment or adjustment	Twenty days (1)	When the payment or adjustment is made.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay, and Punjab in the exercise of its original jurisdiction.	Ditto ...	The date of the decree or order
163.—By a plaintiff for an order to set aside a dismissal by default.	Thirty days.	The date of the dismissal.
164.—By a defendant for an order to set aside a judgment <i>ex-parte</i> .	Ditto ...	The date of executing any process for enforcing the judgment.

* Notice of application for execution of decree not sufficient 'process

for enforcing; such process means actual process by attachment in execution of property or person of debtor — *Poorno v. Prosonno* (1).

Description of Application.	Period of limitation.	Time from which period begins to run.
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THIRD DIVISION—APPLICATIONS.

165.—Under the Code of Civil Procedure, by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Thirty days.	The date of the dispossession.
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Where two years after sale, and one and-a-half years after confirmation, the judgment-debtor, on a summary application, got an order setting aside sale and ousting purchaser, application held barred under article — *Mahommed Hussein v. Kohil* (2).

166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court (3).	Thirty days	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto ...	The date of the resistance, obstruction, or dispossession.

Where warrant for possession of land in execution of decree not executed owing to resistance of judgment-debtors in 1880, and no complaint made under sec. 328, Act X, 1877, but a fresh warrant applied for

(1) I. L. R., 2 Calc., 123.

(2) I. L. R., 7 Calc., 91.

(3) Vide Act XII, 1879, s. 108.

and resistance again made in 1881,—held, complaint within thirty days ; as to second obstruction not barred under the article.—*Ramasekara v. Dharmarayan* (1).

Description of Application.	Period of limitation.	Time from which period begins to run.
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THIRD DIVISION—APPLICATIONS.

168.—For a re-admission of an appeal dismissed for want of prosecution.	Thirty days.	The date of the dismissal.
169.—For a re-hearing of an appeal heard <i>ex-parte</i> in the absence of the respondent.	Ditto	The date of the decree in appeal.
170.—For leave to appeal as a pauper.	Ditto ...	The date of the decree appealed against
171.—Under section 363 or 365 of the Code of Civil Procedure by a person claiming to be the legal representative of a deceased plaintiff or appellant (2).	Sixty days	The date of the plaintiff's or appellant's death (2).

Article does not apply to legal representative of deceased judgment-creditor, claiming admission to continue execution-proceedings commenced by deceased. He may apply at any time subject to the same conditions as will apply to his principal.—*Gulabdas v. Lakshman* (3)

Similarly held as to right of legal representatives of a plaintiff dying after decree to file an appeal—*Ramananda v. Minatchi* (4).

Article does not apply to application to revive a pending suit, as a right to apply in such suit is a right which accrues from day to day.—*Kedarnath v. Harrachand* (5).

171A.—Under section 366 of the same Code, by the defendant (2).	Sixty days	The sixtieth day from the date of the plaintiff's death (2).
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-- *Kedarnath v. Harrachand* (5) similar to above ruling under art. 171.

171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant (2)	Sixty days	The date of the defendant's death.
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(1) I. L. R., 5 Mad., 113.

(2) *Vide* Act XII, 1879, s. 108.

(3) I. L. R., 3 Bom., 221.

(4) I. L. R., 3 Mad., 256.

(5) I. L. R., 8 Calc., 420.

Description of Application.	Period of limitation.	Time from which period begins to run.
THIRD DIVISION—APPLICATIONS.		
171c.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal (1).	Sixty days	The date of the order for abatement or dismissal.
172.—By a purchaser at an execution-sale to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto ...	The date of the sale.
173.—For a review of judgment, except in the cases provided for by No. 162	Ninety days	The date of the decree or order.
174.—By a creditor of an insolvent judgment-debtor under section 353 of the Code of Civil Procedure.	Ditto	The date of the publication of the schedule.
175.—For payment of the amount of a decree by instalments.	Six months	The date of the decree.
176.—Under the Code of Civil Procedure, section 515 or 526, that an award be filed in Court	Ditto ..	The date of the award.
The act of an arbitrator in handing in an award to the proper officer of the Court for the purpose of its being filed is not an 'application' within the meaning of Limitation Act, which would fall under this article.— <i>Roberts v. Harrison</i> (2).		
177.—For the admission of an appeal to Her Majesty in Council.	Six months	The date of the decree appealed against.
178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230.	Three years.	When the right to apply accrues.

(1) *Rule Act XII, 1879, s. 108.*(2) *I. L. R., 7 Calc., 333.*

Article does not apply to applications to revive suits and restore them to the board and the like—*Govind v. Rungunmoney* (1), *Kedarnath v. Hurrachand* (2); nor to applications for probate—*In re Ishan Chunder Roy* (3); nor to an application by a purchaser of land at a Court-sale to obtain a certificate. Act does not apply to applications to a Court to do what it has no jurisdiction to refuse, nor to applications for the exercise of functions of a ministerial character.—*Kylasa v. Ramasamu* (4), *Vithal v. Vithojirav* (5) In the latter case, *In re Khaja Pathanji* (6) and *Tukaram v. Satvaji* (7) were dissented from.

Where sale confirmed in 1874, and certificate of sale given in 1878, the purchaser applied for possession in 1879 Held, right to apply accrued on date certificate of sale was issued, and not on date of confirmation of sale.—*Marsapa v. Marya* (8)

Application to amend a decree under sec. 206, Act X, 1877, falls under this article.—*Gaya Pershad v. Sibi Pershad* (9).

Where plaint filed on 12th March 1875, and summons to defendant was issued next day, and on 20th March an application for substituted service was refused, no further steps were taken till the 21st March 1878, when plaintiff applied for a fresh summons. Held, mere filing of plaint, or plaint being on file, no bar to limitation, and as application made after three years, it should be refused.—*Ramkissen v. Luckeynaram* (10)

Act applies to application to which Government is a party, e g, under sec. 411, Civil Procedure Code —*Appaya v The Collector of Vizagapatam* (11), and to application under sec. 372 of the same.—*Baroda v. Shamal* (12).

Description of Application.	Period of limitation.	Time from which period begins to run.
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THIRD DIVISION—APPLICATIONS.

179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230	Three years, or where a certified copy of the decree or order has been registered, six years.	<p>1 The date of the decree or order, or</p> <p>2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or</p> <p>3 (where there has been a review of the judgment) the date of the decision passed on the review, or</p>
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- (1) 1 L. R., 6 Calc., 60.
 (2) 1 L. R., 8 Calc., 420.
 (3) 1 L. R., 6 Calc., 707.
 (4) 1 L. R., 4 Mad., 172.
 (5) 1 L. R., 6 Bom., 586.
 (6) 1 L. R., 5 Bom., 202.

- (7) 1 L. R., 5 Bom.,
 (8) 1 L. R., 3 Bom., 483.
 (9) 1 L. R., 4 All., 23
 (10) 1 L. R., 3 Calc., 312.
 (11) 1 L. R., 4 Mad., 155.
 (12) 1 L. R., 8 Calc., 837.

Description of Application.	Period of limitation.	Time from which period begins to run.
THIRD DIVISION—APPLICATIONS.		
<p>179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.</p>	<p>Three years, or where a certified copy of the decree or order has been registered, six years.</p>	<p>4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or</p> <p>5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, section 248, or</p> <p>6 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date (1).</p> <p><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this Number shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than</p>

Description of Application.	Period of limitation.	Time from which period begins to run.
THIRD DIVISION—APPLICATIONS.		
<p>179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the Code of Civil Procedure, section 230.</p>	<p>Three years, or where a certified copy of the decree or order has been registered, six years</p>	<p>one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—‘Proper Court’ means the Court whose duty it is (whether under section 226 or 227 of the Code of Civil Procedure or otherwise) to execute the decree or order.</p>

2. ‘Where there has been an appeal.’ These words mean an appeal from the decree and do not include an appeal from an order dismissing an application to set aside a decree.—*Sheo Pershad v. Am-rudh* (1).

An order dismissing an appeal for default is not a new decree from date of which limitation runs — *Vrasami v. Mannomany* (1).

The words 'appeal,' 'Appellate Court' include an appeal to Her Majesty in Council, and limitation in execution-proceedings will run from the date of the order on such appeal. — *Narsingh v. Narayan* (2).

The decree of the High Court on special appeal, and not the decree of the District Judge, is the final decree. — *Imam v. Dasmdha* (3).

The word 'appeal' applies equally to an appeal by defendant, and the date of the decree in such appeal is the date to calculate limitation from — *Venkatarayala v. Narasima* (4).

Where there was a decree against three defendants jointly, one of whom appealed on the whole case and won his appeal, but the decision was reversed on special appeal — held, limitation ran against all defendants from the date of the decree in special appeal — *Mullick Ahmed v. Mahomed Synd* (5). Where, however, in a similar case one defendant appealed on a ground not common to the other — held, that as against that other, limitation ran from date of original decree. — *Sangram v. Bujharat* (6).

4 'The date of applying' This date is the date on which the application is presented, not any date on which it may be pending — *Fakir v. Ghulam* (7).

"In accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order"

Applications under sec. 223 of the Civil Procedure Code to a Court to transfer the decree for execution to another Court are applications to a Court to take 'some step in aid of execution' — *Lachman v. Muddun* (8), *Collins v. Maula Buksh* (9), *Hussain Buksh v. Madge* (10).

An application under sec. 231, by one or more decree-holders for the partial execution of the joint decree, is not an application according to law, and would not keep the decree in force. — *The Collector of Shuh-jehampore v. Surjun* (11).

Though, according to the Civil Procedure Code, one of several decree-holders may not apply for the partial execution of a joint decree, yet an application for partial execution of such a decree by one of the decree-holders may keep in force such decree as being an application according to law — *Pornampilath v. Pornampilath* (12). The Madras Court construed the words 'according to law' as meaning in a lawful manner, and not as the Allahabad Court did, in compliance with the section of a Statute.

An application by a decree-holder to the Court passing the decree for a certificate that a copy of a Revenue Register of the land is necessary to enable him to obtain such copy from the Collector's office

(1) 4 Mad. H. C. Rep., 32.

(2) I. L. R., 2 All., 763.

(3) I. L. R., 1 All., 508.

(4) I. L. R., 2 Mad., 174.

(5) I. L. R., 6 Cal., 194.

(6) I. L. R., 4 All., 36.

(7) I. L. R., 1 All., 580.

(8) I. L. R., 6 Cal., 513.

(9) I. L. R., 2 All., 284.

(10) I. L. R., 1 All., 525.

(11) I. L. R., 4 All., 72.

(12) I. L. R., 3 Mad., 79.

and thereupon attach the land, is an application to the Court to take a step in aid of the execution of the decree.—*Kunhi v. Seshagiri* (1).

An application by the decree-holder for the postponement of a sale in execution of a decree, on the ground that he had allowed the judgment-debtor time, is not an application to the Court to take some step in aid of the execution of the decree. On the contrary, it is an application to stay execution.—*Mamath v. Debi Buksh* (2), following *Fakir v. Ghulam* (3).

Where, on the day of sale of attached property, the parties presented a joint application in writing to the Court, and the decree-holders agreed that the sale might be postponed for that period, and the Court postponed the sale,—held, that such application was one to the Court to take a step in aid of execution of the decree.—*Sitladin v. Mukha* (4), following *Gansham v. Mukha* (5).

As the Judges in the last two decisions do not dissent with the first two, the latter were probably not brought to their notice. A Full Bench ruling would be desirable on the point.

An application during execution-proceedings praying for an order to the Collector to substitute the names of the respondents for that of the appellant in the Settlement Record, is not an application to the Court to take some step in aid of execution.—*Mahommed Umar v. Kamla* (6), *Jibhai v. Parbhu* (7).

An application by a decree-holder to have property put up for sale in one lot in satisfaction of two decrees. Held, not one to Court to take step in execution of decree.—*Khairunissa v. Gauri* (8).

5. A notice of an application for execution of a decree is not invalid, because the application to issue it was not regular.—*Bhari v. Salih* (9).

6. Where a decree was payable in instalments with a proviso that, in event of default in their successive instalments, the whole sum due under the decree might be realized by execution, the instalments fell due monthly from July 1875 to October 1877. Default was made in all the first three instalments, but decree-holder accepted subsequent payments, and did not apply for execution till December 1879. Held, application barred except as far as any instalments due within three years from that date.—*Asmutoollah v. Kally* (10).

Where the decree-holder in 1867 obtained a decree for possession of an estate subject to the provision that if the judgment-debtor paid her Rs. 180 a year in three instalments, the decree should not be executed, but that if default was made in payment of three such, she should be entitled to delivery of estate. Default was made in 1874, but the benefit of the provision was waived. A fresh default was made, and in 1880, execution was applied for. Held, barred under the article.—*Ugranath v. Langanmani* (11).

(1) I. L. R., 5 Mad., 141.

(2) I. L. R., 3 All., 757.

(3) I. L. R., 1 All., 580.

(4) I. L. R., 4 All., 60.

(5) I. L. R., 3 All., 320.

(6) I. L. R., 4 All., 34.

(7) I. L. R., 1 Bomb., 59.

(8) I. L. R., 3 All., 484.

(9) I. L. R., 1 All., 675.

(10) I. L. R., 7 Calc., 56.

(11) I. L. R., 4 All., 83.

Description of Application.	Period of limitation.	Time from which period begins to run.
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THIRD DIVISION—APPLICATIONS.

<p>180.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.</p>	<p>Twelve years.</p>	<p>When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right : Provided that where the judgment, decree, or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be.</p>
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